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08 JUL 29 PM 2:51
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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JL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAURA CUTLER, Individually and on
Behalf of All Others Similarly Situated,

CV

Case No. 08

3629

Plaintiff,

CLASS ACTION COMPLAINT

v.

DEMAND FOR JURY TRIAL

MATSON NAVIGATION CO., INC.;
ALEXANDER & BALDWIN, INC.;
HORIZON LINES, LLC; and HORIZON
LINES, INC.,

Defendants.

COPY

1 **I. INTRODUCTION**

2 1. Plaintiff Laura Cutler brings this action on behalf of herself individually and on
3 behalf of a plaintiff class (the "Class") consisting of all persons and entities in the United States,
4 and its territories and possessions, who purchased domestic ocean shipping services between the
5 continental United States and Hawaii ("Hawaiian Ocean Shipping") directly from a Defendant
6 from at least four years ago to the present (the "Class Period").

7 2. Defendants are domestic ocean shipping liners who collectively transport millions
8 of revenue tons of cargo each year between ports in the United States and in the United States'
9 territories and possessions. Defendants serve routes between the West Coast and Hawaii, and they
10 are the only competitors of each other on these routes. Plaintiff alleges that during the Class
11 Period, Defendants conspired, combined and contracted to fix, raise, maintain, and stabilize the
12 price at which Hawaiian Ocean Shipping would be sold.

13 3. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
14 Class paid artificially inflated prices for Hawaiian Ocean Shipping. Such prices exceeded the
15 amount they would have paid if the prices had been determined by a competitive market without
16 the conspiracy.

17 **II. JURISDICTION AND VENUE**

18 4. Plaintiff brings this action under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§
19 15 and 26), to recover treble damages and costs of suit, including reasonable attorneys' fees,
20 against defendants for the injuries sustained by Plaintiff and the members of the Class by reason of
21 the violations, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

22 5. This action is also instituted to secure injunctive relief against Defendants to
23 prevent them from further violations of Section 1 of the Sherman Act, as hereinafter alleged.

24 6. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337 and by
25 Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) and 26).

26 7. Venue is proper in this judicial district because, during the Class Period, one or
27 more of the Defendants resided, transacted business, was found, or had agents in this district, and
28

1 because a substantial part of the events giving rise to Plaintiff's claims occurred, and a substantial
2 portion of the affected interstate trade and commerce described below has been carried out, in this
3 district.

4 **III. INTRADISTRICT ASSIGNMENT**

5 8. This action arises in Alameda County because that is where a substantial part of the
6 events that give rise to the claim occurred. Pursuant to Civil Local Rule 3-2(d), this action should
7 be assigned to the San Francisco Division or the Oakland Division.

8 **IV. THE PARTIES**

9 **A. Plaintiff**

10 9. Plaintiff Laura Cutler is a resident of Westhaven, California. During the Class
11 Period, Plaintiff purchased Hawaiian Ocean Shipping directly from one or more Defendants. As a
12 result of the alleged conspiracy, Plaintiff was injured by reason of the antitrust violations alleged
13 herein.

14 **B. Defendants**

15 10. Defendant Matson Navigation Company, Inc. is a Hawaii corporation with its
16 principal place of business in Oakland, California. Matson Navigation Company, Inc. handles
17 approximately 67 percent of the goods shipped from the West Coast to Hawaii. Matson
18 Navigation Company, Inc. is a wholly-owned subsidiary of Defendant Alexander & Baldwin, Inc.
19 During the Class Period, Matson sold Hawaiian Ocean Shipping to customers in the United States
20 and its territories and possessions.

21 11. Defendant Alexander & Baldwin, Inc. is a Hawaii corporation with its principal
22 place of business in Honolulu, Hawaii. Alexander & Baldwin, Inc. is a diversified corporation
23 that provides ocean transportation services through Defendant Matson Navigation Company, Inc.,
24 the largest of its subsidiaries. During the Class Period, Alexander & Baldwin, Inc. sold Hawaiian
25 Ocean Shipping to customers in the United States and its territories and possessions.

26 12. Defendant Matson Navigation Company, Inc. and Defendant Alexander & Baldwin,
27 Inc. are collectively referred to herein as "Matson."

1 13. Defendant Horizon Lines, LLC is a Delaware limited liability company with its
2 principal place of business in Charlotte, North Carolina. Horizon Lines, LLC is a wholly owned
3 operating subsidiary of defendant Horizon Lines, Inc. During the Class Period, Horizon Lines,
4 LLC sold Hawaiian Ocean Shipping to customers in the United States and its territories and
5 possessions.

6 14. Defendant Horizon Lines, Inc. is a Delaware corporation with its principal place of
7 business in Charlotte, North Carolina. It is publicly traded on the New York Stock Exchange. It
8 operates as a holding company for its wholly-owned subsidiaries, including Defendant Horizon
9 Lines, LLC. During the Class Period, Horizon Lines, Inc. sold Hawaiian Ocean Shipping to
10 customers in the United States and its territories and possessions.

11 15. Defendant Horizon Lines, LLC and Defendant Horizon Lines, Inc. are collectively
12 referred to herein as "Horizon."

13 **C. Agents and Co-Conspirators**

14 16. The acts alleged against the Defendants in this Complaint were authorized, ordered,
15 or done by their officers, agents, employees, or representatives, while actively engaged in the
16 management and operation of Defendants' businesses or affairs.

17 17. Certain other persons, firms, corporations and entities have participated as unnamed
18 co-conspirators of Defendants in the violations and conspiracy alleged herein. In order to engage
19 in the offenses charged and violations alleged herein, these co-conspirators have performed acts
20 and made statements in furtherance of the antitrust violations and conspiracies alleged herein.

21 18. At all relevant times, each Defendant was an agent of each of the remaining
22 Defendants, and in doing the acts alleged herein, was acting within the course and scope of such
23 agency. Each Defendant ratified and/or authorized the wrongful acts of each of the Defendants.
24 Defendants, and each of them, are individually sued as participants and as aiders and abettors in the
25 improper acts and transactions that are the subject of this action.

V. CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action on behalf of herself and as a class action under the provisions of Rule 23(a) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class:

All persons and entities in the United States, and its territories and possessions, who purchased domestic ocean shipping services between the continental United States and Hawaii directly from a Defendant from at least four years ago to the present. The class excludes governmental entities, Defendants, co-conspirators, other sellers or providers of domestic ocean shipping services, and the present and former parents, predecessors, subsidiaries and affiliates of the foregoing.

20. Plaintiff believes that there are hundreds, if not thousands, of Class members as above described, the exact number and their identities being known by Defendants.

21. The Class is so numerous and geographically dispersed that joinder of all members is impracticable.

22. There are questions of law and fact common to the Class, which questions relate to the existence of the conspiracy alleged, and the type and common pattern of injury sustained as a result thereof, including, but not limited to:

- a. Whether defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain and/or stabilize prices of Hawaiian Ocean Shipping and/or engaged in market allocation for those services sold in the United States, and its territories and possessions.
- b. The identity of the participants in the conspiracy;
- c. The duration of the conspiracy alleged in this Complaint and the nature and character of the acts performed by defendants and their coconspirators in furtherance of the conspiracy;
- d. Whether the alleged conspiracy violated Section 1 of the Sherman Act;
- e. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business and property of Plaintiff and other members of the Class;

f. The effect of Defendants' conspiracy on the prices of Hawaiian Ocean Shipping sold in the United States and its territories and possessions during the Class Period; and

g. The appropriate measure of damages sustained by plaintiff and other members of the Class.

23. Plaintiff is a member of the Class, Plaintiff's claims are typical of the claims of the Class members, and Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff is a direct purchaser of Hawaiian Ocean Shipping, and her interests are coincident with and not antagonistic to those of the other members of the Class. In addition, Plaintiff is represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

24. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications.

25. Defendants have acted, and refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

26. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

27. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class is readily definable and is one for which records should exist in the files of Defendants and their co-conspirators. Prosecution as a class action will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently and without duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate an antitrust claim such

1 as is asserted in this Complaint. This class action presents no difficulties of management that
2 would preclude its maintenance as a class action.

3 **VI. TRADE AND COMMERCE**

4 28. During the Class Period, Defendants sold substantial quantities of Hawaiian Ocean
5 Shipping in a continuous and uninterrupted flow of interstate commerce to customers throughout
6 the United States.

7 29. The business activities of Defendants that are the subject of this action were within
8 the flow of, and substantially affected, interstate trade and commerce.

9 **VII. FACTUAL ALLEGATIONS**

10 **A. Importance of Ocean Transport**

11 30. Ocean shipping is a highly effective method of moving large quantities of non-
12 perishable goods and raw materials. Charges for ocean carriage are calculated by revenue ton,
13 which is the greater of the cubic measure or weight of a shipment as packed for shipping, and such
14 charges as the following: base ocean freight, terminal handling charge, fuel surcharge, warfage
15 Hawaii, warfage West Coast, neighbor island arbitrary, drayage, intermodal rail, and demurrage.
16 In 2002, U.S. domestic ocean trades amounted to 196 million metric tons.

17 31. The shipping industry has been protected by almost all countries in the world
18 because of the industry's importance to national security and defense, as well as international trade.
19 Since the 1800s, ship owners have participated in liner conferences to coordinate service,
20 exchange market information, and agree upon rates. In the international ocean shipping industry,
21 these liner conferences, which have many cartel-like characteristics, have been exempt from the
22 antitrust laws.

23 32. Unlike international ocean shipping, the exchange of market information,
24 agreements on prices, agreements on capacity allocation decisions, and the use of each other's
25 capacity to sell to one's own shippers, are prohibited for carriers operating domestic ocean routes.

26 33. The domestic ocean trade is comprised of the following three sectors: (a)
27 noncontiguous trade between the continental United States and Puerto Rico, Alaska, Hawaii,
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1 Guam, and other U.S. Pacific Islands; (b) coastwise trade along the Atlantic, Gulf, and Pacific
2 coasts, as well as trade between coasts and the St. Lawrence Seaway; and (c) intercoastal trade
3 between the Atlantic or Gulf and Pacific coasts by way of the Panama Canal. This action relates
4 solely to noncontiguous trade between the continental United States and Hawaii.

5 34. Because of its location, the State of Hawaii depends almost entirely on ocean
6 shipping to import its essential commodities like food, clothing, fuel, building materials, and
7 automobiles, as well as to export its local products like pineapple, sugar, molasses, and livestock,
8 to and from the neighbor islands, the continental United States, and various foreign countries. By
9 one estimate, 98.6 percent of all Hawaii's imports arrive by ocean shipping. In 2003, over 5
10 million metric tons of cargo was shipped in noncontiguous domestic trade with Hawaii.

11 35. In January 2008, Pacific Business News reported that the cost of shipping goods to
12 Hawaii had risen as much as 40 percent since 2005. This was in large part a result of Defendants'
13 conspiracy as alleged herein.

14 **B. Inferential Evidence of Cartel Activity in the Hawaiian Ocean Shipping Industry**

15 36. The Hawaiian Ocean Shipping industry has several characteristics that facilitated a
16 conspiracy, including market concentration, ease of information sharing, homogeneity of products,
17 and significant barriers to entry.

18 37. The Hawaiian Ocean Shipping market is a duopoly that is conducive to collusion.
19 Defendants Matson and Horizon control 96 percent of the total market for Hawaiian Ocean
20 Shipping.

21 38. Each of the Defendants herein participates in trade association activities that have
22 provided opportunities for information sharing. For example, each of the Defendants is a member
23 of the Maritime Cabotage Task Force ("MCTF"), a lobbying group founded in 1995 to oppose
24 efforts to open the market for non-contiguous shipping. Philip Grill of Matson is the Chairman of
25 the MCTF's Board of Directors, and Chuck Raymond and Robert Zuckerman of Horizon are
26 Board members. Thus, the executives of Matson and Horizon have close relationships that have
27 fostered the conspiracy herein.

1 39. Additionally, each of the Defendants here has ready access to industry data that
2 facilitates effectuation and monitoring of the conspiracy. For example, PIERS, which
3 stands for Port Import Export Reporting Service, collects and distributes, for a fee, data for the
4 maritime industry. This data includes for example, cargo quantity and unit of measure, cargo
5 weight, and volume. This type of information within the industry has allowed Defendants to
6 monitor their conspiracy and verify that it is working.

7 40. Hawaiian Ocean Shipping services are homogenous and fungible because such
8 services are not readily substitutable with other methods of transportation. For example, shipping
9 heavy, bulky goods via air freight is prohibitively expensive, and there obviously are no road or rail
10 routes between the mainland United States and Hawaii.

11 41. There are substantial barriers to enter the Hawaiian Ocean Shipping market,
12 including: (a) entrenched market positions by the incumbent shipping companies; (b) the high
13 costs associated with ocean transport vessels and to build the infrastructure for those vessels; (c)
14 the need to develop a customer base; (d) constraints on port space; and (e) restrictions imposed by
15 the Merchant Marine Act of 1920 at 26 U.S.C. § 100 *et seq.* (commonly referred to as the “Jones
16 Act”). These barriers facilitate the conspiracy alleged herein because they insulate existing
17 shipping companies from new competition and perpetuate the high market concentration.

18 **C. The Jones Act**

19 42. The Jones Act is a protectionist statute that prohibits any goods “transported by
20 water, or by land and water. . . between points in the United States. . . either directly or via a
21 foreign port,” from being shipped unless the vessel “is wholly owned by citizens of the United
22 States for purposes of engaging in the coastwise trade” and has been issued a “certificate of
23 documentation” or is exempt from documentation. 46 U.S.C. § 55102.

24 43. The purpose of the Jones Act is to protect American shipping companies. It grants
25 an exclusive privilege to certain U.S.-made, U.S.-manned, U.S.-flagged, and U.S. Coast Guard-
26 approved vessels to engage in ocean shipping of merchandise or goods to or from U.S. territories,
27 possessions, or non-contiguous States. These laws are restrictive, prohibiting all other vessels,
28

1 such as foreign-flagged, foreign-built, foreign-crewed, or even foreign-refurbished vessels, from
2 engaging in this trade.

3 44. The Jones Act's restriction on the carriage of domestic cargoes to U.S.-made, U.S.-
4 flagged, U.S.-crewed, and U.S.-owned ships, combined with the relatively small size of these trade
5 routes, resulted in an essentially duopolistic Hawaiian Ocean Shipping market.

6 45. The Jones Act, however, provides no immunity to Defendants for their collusion,
7 market sharing, and/or price fixing, and the conspiracy alleged herein is illegal under the Sherman
8 Act.

9 **D. Defendants' Collusive Conduct**

10 46. Defendants have conspired to fix, raise, maintain and/or stabilize prices for
11 Hawaiian Ocean Shipping.

12 47. A major feature of Defendants' conspiracy has been to share capacity on each
13 other's ships. Defendants' capacity sharing arrangement allows each carrier to transport cargo on
14 its competitor's ships at preferential rates. Without this collusion and capacity sharing
15 arrangement, defendants would have had to add additional vessels to their routes in order to carry
16 their customers' cargo, which would result in more capacity, more frequent service, and lower
17 prices. The capacity sharing arrangement was the functional equivalent of two duopolists acting
18 like a monopoly. A study published by the United States Department of Transportation's Maritime
19 Administration in May 2006 explicitly equated excess capacity with competition by stating, "...
20 competitive downward pressure on freight rates may result from overcapacity."

21 48. In August 2001, Horizon (then CSX Lines) began shipping on Matson's midweek
22 sailing from Los Angeles, eventually withdrawing its own bi-weekly service. Horizon advertises
23 this mid-week sailing as its "mid-week express." Less regularly, Matson also ships containers on
24 Horizon's sailings when Matson's own sailings are full.

25 49. Another feature of the trade has been parallel, identical, and near simultaneous
26 imposition of fuel surcharges. Fuel surcharges are a separate component of the cost to ship cargo
27 that is supposed to assist the carrier to recover fuel costs. Matson and Horizon justify their fuel
28

1 surcharges by claiming that the surcharges are necessary to offset the increases in fuel costs. In a
 2 truly competitive market, the imposition of a fuel surcharge by a carrier that exceeds the actual cost
 3 of fuel consumed should create competition from others. The more fuel efficient operator should
 4 finds ways to capture cargo from the less fuel efficient operator, and pricing would be one of those
 5 ways. Here, however, Defendants chose not to price compete, and a plausible explanation for that
 6 lack of competition in this duopoly is that Defendants were conspiring. Horizon itself
 7 acknowledged the lack of competition in a February 1, 2008 press release, which states “we were
 8 able to generate net income and earnings per share” based in part on “a stable rate environment in
 9 all three of our offshore markets.”

10 50. Matson and Horizon have imposed identical fuel surcharges during the Class
 11 Period. They both introduced fuel surcharges for the first time in October 1999. Both liners
 12 charged the same fuel surcharge - 1.75 percent of revenue. Since then, each liner has adjusted fuel
 13 surcharges 27 times - each adjustment occurred within days of the competitor’s adjustment and for
 14 the same amount. The following chart illustrates defendants’ lockstep behavior:

15
 16 **Hawaiian Ocean Shipping Rate Increases March 2004 - March 2008**
Matson Navigation Company, Inc. and Horizon Lines, Inc.

Company	Date of Announcement	Effective Date	Fuel Surcharge Increase/Decrease	Per Container Fee Increase	Terminal Handling Fee Increase (Per Container)
Matson Navigation	3/1/2004	3/14/2004	7.5 to 8%		
Horizon Lines	Unknown	Approx. 3/2004	7.5 to 8%		
Matson Navigation	Approx. 6/2004	6/2004	8 to 8.8%		
Horizon Lines	6/2004	6/2004	8 to 8.8%		
Matson Navigation	10/8/2004	10/18/2004	8.8 to 9.2%		
Horizon Lines	10/8/2004	10/18/2004	8.8 to 9.2%		
Horizon Lines	9/7/2005	9/15/2005	11.5 to 14%		

1	Matson Navigation	9/9/2005	10/2/2005	11.5 to 13%		
2						
3	Matson Navigation	11/10/2005	1/1/2006		\$125/Westbound \$75/Eastbound Approx. 3.9%	\$60/Westbound \$30/Eastbound Approx. 22%
4	Horizon Lines	11/29/2005	1/2/2006		\$125/Westbound \$75/Eastbound	\$60/Westbound \$30/Eastbound
5						
6	Matson Navigation	12/9/2005	1/1/2006	13 to 15%		
7	Horizon Lines	12/15/2005	1/2/2006	13 to 15%		
8						
9	Matson Navigation	3/10/2006	4/2/2006	15 to 18.5%		
10	Horizon Lines	Unknown	Approx. 4/2006	15 to 18.5%		
11						
12	Matson Navigation	5/12/2006	6/4/2006	18.5 to 21.25%		
13	Horizon Lines	5/23/2006	6/5/2006	18.5 to 21.25%		
14						
15	Matson Navigation	9/21/2006	10/1/2006	21.25 to 19.75%		
16	Horizon Lines	9/26/2006	10/2/2006	21.25 to 19.75%		
17						
18	Matson Navigation	10/17/2006	11/25/2006	19.75 to 18.75%		
19	Horizon Lines	10/22/2006	11/6/2006	19.75 to 18.75%		
20						
21	Matson Navigation	11/17/2006	1/1/2007		\$100/Westbound \$50/Eastbound Approx. 3.3%	\$150/Westbound \$75/Eastbound Approx. 45-46%
22	Horizon Lines	11/22/2006	1/1/2007		\$100/Westbound No Eastbound data	\$150/Westbound \$75/Eastbound Approx. 45-46%
23						
24	Matson Navigation	1/22/2007	1/28/2007	18.75 to 17.5%		
25	Horizon Lines	1/24/2007	1/29/2007	18.75 to 17.5%		
26						
27	Matson Navigation	2/21/2007	3/11/2007	17.5 to 19.5%		
28	Horizon Lines	2/23/2007	3/11/2007	17.5 to 19.5%		
	Horizon Lines	4/18/2007	5/6/2007	19.5 to 20.75%		

Matson Navigation	4/21/2007	5/6/2007	19.5 to 20.75%		
Matson Navigation	5/16/2007	5/27/2007	20.75 to 22.5%		
Horizon Lines	5/17/2007	5/27/2007	20.75 to 22.5%		
Matson Navigation	7/20/2007	8/19/2007	22.5 to 24%		
Horizon Lines	7/26/2007	8/20/2007	22.5 to 24%		
Horizon Lines	10/16/2007	11/11/2007	24 to 25%		
Matson Navigation	10/22/2007	12/2/2007	24 to 26%		
Matson Navigation	11/13/2007	12/14/2007	26 to 29%		
Horizon Lines	11/20/2007	12/17/2007	25 to 29%		
Horizon Lines	12/26/2007	2/4/2008	29 to 32%		
Matson Navigation	1/4/2008	2/4/2008	29 to 31.5%		
Matson Navigation	3/11/2008	4/6/2008	31.5 to 33.5%		
Horizon Lines	3/12/2008	4/7/2008	32 to 33.5%		

51. Although Matson and Horizon claimed that these fuel surcharges were necessary to recoup increased costs, the surcharges did not reflect actual fuel cost increases. Fuel costs among ocean liners vary significantly due to a number of unique factors, such as differences in vessels and fuel efficiency, different routes, the use of hedging, and individual fuel conservation efforts. It is highly unlikely, if not impossible, that Matson and Horizon incurred identical fuel expense increases. Furthermore, the revenue generated by the fuel surcharges depends on the underlying revenues generated, which varies between the two carriers. Thus, there is no way that these fuel surcharges only raised enough additional revenue to cover the increased costs that each carrier experienced.

52. In addition to the lockstep fuel surcharge increases, Matson and Horizon have acted

1 in lockstep on other matters as well. In the spring of 2006, Matson announced that it would make
2 surcharge changes whenever it deemed necessary, rather than on a quarterly basis as had been its
3 prior practice. Shortly thereafter, Horizon changed its longstanding policy and announced it would
4 adjust fuel surcharges “in a more timely manner.”

5 53. Defendants’ lockstep pattern was broken for the first time in May, 2008. On May 9,
6 2008, Horizon announced that it would raise its fuel surcharge from 33.75 percent to 35.25,
7 percent, effective June 8. On May 19, 2008, Matson announced that it would maintain its fuel
8 surcharge at the existing 33.75 percent level. Two days later, on May 21, Horizon announced it
9 would not implement the previously announced increase and would instead keep the fuel surcharge
10 at the existing rate. This break in the over 8-year pattern is significant because it occurred only
11 after the United States Department of Justice (“DOJ”) announced an investigation into the
12 “domestic ocean carriage” industry.

13 **E. Government Investigation**

14 54. On April 17, 2008, it was disclosed that the DOJ is investigating “domestic ocean
15 carriage.” The same day, Defendant Horizon Lines, Inc. acknowledged that federal agents served
16 warrants and a grand jury subpoena on the company in connection with that investigation.
17 Defendant Alexander & Baldwin, Inc. confirmed that it was preparing to receive a DOJ subpoena
18 related to “domestic ocean carriage.” Significantly, Alexander & Matson, Inc.’s domestic shipping
19 trade is limited to trade between the continental United States and Hawaii and Guam. In a
20 quarterly report filed with the United States Securities and Exchange Commission on May 2, 2008,
21 Alexander & Baldwin stated that “Matson understands that while the investigation currently is
22 focused on the Puerto Rico trade, *it also includes pricing practices in connection with all domestic*
23 *trades*, including the Alaska, *Hawaii*, and Guam trades.” (Emphasis added).

24 55. To obtain the search warrants executed upon Defendants, the United States had to
25 have probable cause, accepted by a magistrate, to believe that it would obtain evidence of an
26 antitrust violation as a result of executing the search warrant – that is, the United States had to have
27 evidence sufficient to warrant a person of reasonable caution to believe that raiding the offices of a
28

1 seemingly lawful business would uncover evidence of antitrust violations and that claimed
2 evidence had to have been examined and accepted by a magistrate. That belief, which was
3 recounted in sworn affidavits or by testimony, must be grounded on reasonably trustworthy
4 information.

5 **VIII. FRAUDULENT CONCEALMENT**

6 56. Plaintiff had no knowledge of the combination and conspiracy alleged herein, or of
7 any facts that might have led to the discovery thereof in the exercise of reasonable diligence, prior
8 to April 17, 2008, when it was revealed that the DOJ was investigating "domestic ocean carriage."

9 57. Plaintiff could not have discovered the existence of the combination and conspiracy
10 alleged herein at an earlier date by the exercise of reasonable due diligence because of the
11 deceptive practices and techniques of secrecy employed by the Defendants and their co-
12 conspirators to avoid detection and affirmatively conceal such violations including.

13 58. As a result of the fraudulent concealment of the conspiracy, Plaintiff asserts the
14 tolling of the applicable statute of limitations affecting the causes of action by Plaintiff and the
15 members of the Class.

16 **IX. CAUSE OF ACTION**

17 59. Plaintiff incorporates and re-alleges each allegation set forth in the preceding
18 paragraphs of this Complaint.

19 60. Beginning at least four years ago and continuing to the present, Defendants and
20 their co-conspirators, by and through their officers, directors, employees, agents, or other
21 representatives, entered into a continuing agreement, understanding, and conspiracy in restraint of
22 trade to artificially raise, fix, maintain, and/or stabilize prices for Hawaiian Ocean Shipping in the
23 United States, and its territories and possessions, in violation of Section 1 of the Sherman Act (15
24 U.S.C. § 1).

25 61. Defendants' unlawful conduct resulted in artificially high prices charged by
26 Defendants and their co-conspirators to Plaintiff and the members of the Class for Hawaiian Ocean
27 Shipping.

(2) communicating or causing to be communicated to any other person engaged in the manufacture, distribution or sale of any product except to the extent necessary in connection with a bona fide sales transactions between the parties to such communications.

E. That Plaintiff and members of the Class have such other, further and different relief as the case may require and the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial, pursuant to Federal Rule of Civil Procedure 38(b), of all the claims asserted in this Complaint so triable.

DATED: July 29, 2008

Respectfully Submitted,



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